

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION**

ANGEL FIGUEROA,)	
)	
)	
vs.)	2:12-CV-353-JMS-WGH
)	
CARRAWAY (Warden),)	
)	
)	
Respondent.)	

Entry Directing Further Proceedings

Angel Figueroa is serving the executed portion of a sentence enhanced pursuant to 28 U.S.C. § 851 because of a prior drug conviction in the Circuit Court of Cook County, Illinois. In his petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2241(c)(3) he claims that he is “actually innocent” of the § 851 enhancement because of action taken by the Illinois trial court on August 28, 2012. He offers the Order of August 28, 2012, to justify his challenge pursuant to § 2241. *See Hill v. Werlinger*, 695 F.3d 644, 647-48 (7th Cir. 2012)(“In general, “§ 2255 is the exclusive means for a federal prisoner to attack his conviction” or sentence. However, in a narrow class of cases, under § 2255’s ‘savings clause,’ a federal prisoner may bring a § 2241 petition if he can show that the § 2255 remedy ‘is inadequate or ineffective to test the legality of his detention.’ ‘Inadequate or ineffective’ means that ‘a legal theory that could not have been presented under § 2255 establishes the petitioner’s actual innocence.’”)(internal citations omitted).

The Order of August 28, 2012, which is an Exhibit to the habeas petition, is shown below:

Case 2:12-cv-00353-JMS-WGH Document 2-1 Filed 12/03/12 Page 46 of 46 PageID #: 62

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT OR CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS
OR
THE VILLAGE/TOWN/CITY/OF _____
vs.
ANGEL FIGUEROA
Defendant

Probation/Conditional Discharge/Supervision Warrant

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97CR0152201
INDICTMENT/INFORMATION CASE NO.
And/or
96115120701
MUNICIPAL DEPARTMENT CASE NO.

ORDER

It is hereby ordered:

☒ That all warrants issued in this cause, prior to the date of this order, are quashed and recalled
AND/OR
☐ That the warrant in this cause has been executed.

It is further ordered:

That all warrants, issued in this cause prior to the date of this order, and in the possession of the police agency to whom they were issued for service, shall be returned to the office of the Clerk of the Circuit Court.

Dated 08/28/2012
Judge Stanley J. Sacks Clerk 1531

FOR INTERNAL OFFICE USE ONLY

Order of Recall/Quash/Execute sent to Law Enforcement: COOK COUNTY SHERIFF

Prepared by: SMITH, ALMIDIA O Date/Time: 08/28/2012 10:25:47 System: GCP5, CC00, K193, SMITH1
clerk

Audited By: _____
clerk

Comment: _____

ENTERED
JUDGE STANLEY J. SACKS-1531
AUG 29 2012
CLERK OF THE CIRCUIT COURT OF COOK COUNTY

CLERK OF THE CIRCUIT COURT OF COOK COUNTY

(E)

CCR N702

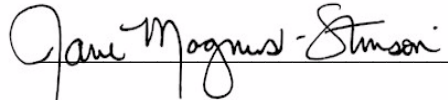
The principle Figueroa attempts to invoke by arguing his “actual innocence” of the sentence enhancement is valid. *Narvaez v. United States*, 674 F.3d 621 (7th Cir. 2011); *Newbern v. United States*, 2012 WL 6699118, **5-7 (S.D.Ill. Dec. 26, 2012). Whether this principle can be properly invoked in the circumstances Figueroa presents is not as clear.

The language of the Illinois trial court is this: “That all warrants, issued in this cause prior to the date of this Order, and in the possession of the police agency to whom they were issued for service, shall be returned to the office of the clerk of the Circuit Court.” Figueroa equates this language with an order vacating or expunging the underlying conviction. But how this language can be understood as having that effect is not apparent.

Figueroa shall therefore have **through May 28, 2013**, in which to explain how the Order of the Illinois Circuit Court of August 28, 2012, referred to in this Entry can be understood as vacating or expunging the underlying conviction on which the § 851 enhancement was based.

IT IS SO ORDERED.

Date: 05/07/2013


Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

Distribution:

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